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Attorneys for Plaintiffs REYN'S PASTA BELLA, LLC, JEFFREY LEDON
 DEWEESE, M.D., BARRY LEONARD, dba CRITTER FRITTERS, HAT-IN-THE-
 RING, INC. dba EDDIE RICKENBACKER'S, on Behalf of Themselves and
 All Others Similarly Situated

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

REYN'S PASTA BELLA, LLC,) Case No. C 02-03003 JSW
 JEFFREY LEDON DEWEESE, M.D.,)
 BARRY LEONARD, dba CRITTER) **SECOND AMENDED CLASS ACTION**
 FRITTERS, HAT-IN-THE-RING, INC.) **ANTITRUST COMPLAINT AND JURY**
 dba EDDIE RICKENBACKER'S, on) **DEMAND**
 Behalf of Themselves and All)
 Others Similarly Situated,)

CLASS ACTION

Plaintiffs,

vs.

VISA U.S.A. INC., MASTERCARD
 INTERNATIONAL, INC., BANK OF
 AMERICA, N.A., a subsidiary of
 BANK OF AMERICA CORPORATION,
 WELLS FARGO BANK, N.A., a
 subsidiary of WELLS FARGO &
 COMPANY, U.S. BANK, N.A, a
 subsidiary of U.S. BANCORP,

Defendants.

1 Plaintiffs REYN'S PASTA BELLA, LLC, JEFFREY LEDON DEWEESE,
2 M.D., BARRY LEONARD, dba CRITTER FRITTERS, and HAT-IN-THE-RING,
3 INC. dba EDDIE RICKENBACKER'S aver for their complaint against
4 VISA U.S.A. INC. ("VISA") and MASTERCARD INTERNATIONAL, INC.
5 ("MASTERCARD"), BANK OF AMERICA, N.A., a subsidiary of BANK OF
6 AMERICA CORPORATION, WELLS FARGO BANK, N.A., a subsidiary of
7 WELLS FARGO & COMPANY, U.S. BANK, N.A, a subsidiary of U.S.
8 BANCORP, upon knowledge with respect to their own acts and upon
9 information and belief with respect to all other matters, as
10 follows:
11
12

13 JURISDICTION

14 1. Jurisdiction and venue of this action is under 15
15 U.S.C. §§ 15(a) and 26.

16 2. Defendants or their agents inhabit or are found or
17 reside in the Northern District of California.

18 3. VISA and MASTERCARD are each joint ventures of
19 Defendant banks and all other bank members of VISA and
20 MASTERCARD. VISA and MASTERCARD are engaged in interstate
21 commerce and are doing business and are present in the Northern
22 District of California. Venue of this action against VISA and
23 MASTERCARD, and Defendant banks and all other bank members of
24 VISA and MASTERCARD, is proper in this court.
25

26 INTRADISTRICT ASSIGNMENT

27 4. The basis for assignment to the San Francisco Division
28 is that a substantial part of the events which give rise to the

1 claims of the named Plaintiffs occurred in San Francisco and
2 Sonoma Counties.

3 PARTIES

4 5. Plaintiffs REYN'S PASTA BELLA, LLC, JEFFREY LEDON
5 DEWEESE, M.D., BARRY LEONARD, dba CRITTER FRITTERS, and HAT-IN-
6 THE-RING, INC. dba EDDIE RICKENBACKER'S are proprietorships,
7 corporations or limited liability companies and retailers,
8 authorized to do business in California, who presently have VISA
9 and MASTERCARD contracts with one or more Defendant banks, or
10 their co-conspirators, and have "sold" (deposited) VISA and
11 MASTERCARD charge and debit receipts, or electronic equivalents,
12 to one or more Defendant banks for deposit in their commercial
13 demand deposit bank accounts.
14

15 6. VISA and MASTERCARD are national bank card associations
16 whose members include Defendant banks, other bank members,
17 regional banking associations, and other financial institutions.
18

19 7. Defendant WELLS FARGO BANK N.A., a subsidiary of WELLS
20 FARGO & COMPANY ("WELLS FARGO") is a nationally chartered bank
21 with offices in the Northern District of California. It engages
22 in interstate commerce. It participates in the management of
23 and has a proprietary interest in VISA and MASTERCARD. It is an
24 "acquiring bank" in that throughout California it acquires from
25 one or more of the Plaintiffs and other retailers VISA and
26 MASTERCARD charge and debit receipts, or electronic equivalents,
27 for deposit in their commercial demand deposit bank account at
28

1 the face amount less a fee. Normally WELLS FARGO and other
2 member banks of VISA and MASTERCARD do not charge a fee when
3 they buy (accept) checks from their retail customers for deposit
4 in the bank customer's commercial account.

5
6 8. Defendant BANK OF AMERICA, N.A., a subsidiary of BANK
7 OF AMERICA CORPORATION ("BANK OF AMERICA") is a nationally
8 chartered bank with offices in the Northern District of
9 California. It engages in interstate commerce. It participates
10 in the management of and has a proprietary interest in VISA and
11 MASTERCARD. It is an "acquiring bank" in that throughout
12 California it acquires from one or more of the Plaintiffs or
13 other retailers VISA and MASTERCARD charge and debit receipts,
14 or electronic equivalents, for deposit in their commercial
15 demand deposit bank account at the face amount less a fee.
16 Normally BANK OF AMERICA and other member banks of VISA and
17 MASTERCARD do not charge a fee when they buy (accept) checks
18 from their retail customers for deposit in the bank customer's
19 commercial account.
20

21 9. Defendant U.S. BANK, N.A, a subsidiary of U.S. BANCORP
22 ("US BANK") is a nationally chartered bank doing business in the
23 Northern District of California. It engages in interstate
24 commerce. It participates in the management of and has a
25 proprietary interest in VISA and MASTERCARD. It is an
26 "acquiring bank" in that throughout California it acquires from
27 one or more of the Plaintiffs and other retailers VISA and
28

1 MASTERCARD charge and debit receipts, or electronic equivalents,
2 for deposit in their commercial demand deposit bank account at
3 the face amount less a fee. Normally US BANK and other member
4 banks of VISA and MASTERCARD do not charge a fee when they buy
5 (accept) checks from their retail customers for deposit in the
6 bank customer's commercial account.
7

8 CO-CONSPIRATORS

9 10. Defendants' co-conspirators are all banks doing
10 business in the United States of America, engage in interstate
11 commerce, and have a management and proprietary interest in VISA
12 and/or MASTERCARD. Each is an "acquiring bank" in that it
13 acquires from one or more of the Plaintiffs or other retailers
14 VISA and/or MASTERCARD charge and debit receipts, or electronic
15 equivalents, for deposit in their commercial demand deposit bank
16 account at the face amount less a fee. Normally each co-
17 conspirator and other member bank of VISA and/or MASTERCARD do
18 not charge a fee when they buy (accept) checks from their retail
19 customers for deposit in the bank customer's commercial account.
20

21 CLASS

22 11. Plaintiffs represent the class of all persons and
23 business entities in the United States of America who are
24 retailers, businesses, professions and merchants, including
25 those "on-line", and presently have VISA and/or MASTERCARD
26 merchant contracts with one or more member banks of Defendants
27 VISA and/or MASTERCARD pursuant to which they have "sold"
28

1 (deposited) VISA and MASTERCARD charge or debit receipts, or
2 electronic equivalents, to one or more member banks for deposit
3 in their commercial demand deposit bank account and have thereby
4 incurred deposit fees. Plaintiffs do not contest in this
5 action, as averred in other litigation, any tying arrangement,
6 of the VISA and MASTERCARD debit charges with other charges.
7 The class does not include the named Defendants, their
8 directors, officers, or members of their families.
9

10 12. These merchant deposit fees have harmed and continue
11 to harm the interests of retailers, businesses, professions and
12 merchants, including those "on-line", throughout the United
13 States of America. The members of the class are so numerous
14 that joinder of all members is impracticable.
15

16 13. Defendants' relationships with the class members and
17 Defendants' practice of assessing deposit fees with respect to
18 class members have been substantially uniform. Questions of law
19 and fact will predominately be common to the class.
20

21 14. The named Plaintiffs have no conflicts of interest
22 with class members and have retained counsel competent and
23 experienced in federal and state antitrust litigation. The
24 named Plaintiffs and their counsel will fairly and adequately
25 represent the interests of the class.
26

27 15. Defendants have acted, continue to act, refused to act
28 and continue to refuse to act on grounds generally applicable to

1 the class, thereby making appropriate damages and injunctive
2 relief with respect to the class as a whole.

3 16. This action is superior to any other method for the
4 fair and efficient adjudication of this legal dispute, as
5 joinder of all members is not only impracticable, but
6 impossible. The damages suffered by certain members of the
7 class are small in relation to the expense and burden of
8 individual litigation and therefore it is highly impractical for
9 such class members, individually, to attempt redress of the
10 wrongful deposit fees and to enjoin price fixing. There will be
11 no extraordinary difficulty in the management of this class
12 action. Common questions of law and fact exist with respect to
13 all class members and predominate over any questions solely
14 affecting individual members. Among the questions of law and
15 fact common to the class, many of which cannot be seriously
16 disputed, are the following:
17
18

19 (a) whether the interchange fee fixed by VISA and
20 MASTERCARD is a sharing of revenue by competitors, a
21 compensation vehicle among competitors, and is not established
22 by free competition.

23 (b) whether the interchange fee provides the floor or
24 establishes a range for the deposit fee levied against the
25 Plaintiffs.
26
27
28

1 (c) whether the interchange fee, and the consequent
2 merchant deposit fee, is set by VISA and MASTERCARD at a
3 supracompetitive level.

4 RELEVANT MARKET

5 17. The relevant product market is acquisition of charge
6 receipts from general purpose credit and debit cards, or
7 electronic equivalents, for deposit in commercial bank accounts.

8 18. The relevant geographic market is the United States of
9 America.

10
11 **FIRST CLAIM FOR RELIEF**
12 **DAMAGES FOR VIOLATIONS OF SECTION ONE**
13 **OF THE SHERMAN ACT AGAINST**
14 **VISA, MASTERCARD, BANK OF AMERICA, WELLS FARGO, US BANK**

15 19. Plaintiffs reaver each and every averment in
16 paragraphs 1 through 18 as if fully set forth herein.

17 20. VISA and MASTERCARD each is a combination of banks
18 which are in competition with each other, directly or
19 indirectly, which as such combination:

20 (a) Sets an "interchange fee" to be paid by an acquiring
21 bank to the institution which issued the VISA or
22 MASTERCARD card. The deposit fee is based largely on
23 the interchange fee. The interchange fee is a sharing
24 of revenue and a compensation vehicle among
25 competitors. The interchange fee is not established
26 by free competition, nor would it necessarily be
27 absorbed by the merchant in a competitive system, e.g.
28 checks. Independent organizations can, and do,

1 process VISA and MASTERCARD charges and debits with
2 the issuing bank for less than the interchange fee.

3 (b) In addition to providing authorization and clearing
4 house (settlement) services to member banks and their
5 agents, VISA and MASTERCARD each provides joint
6 marketing services which services could be adequately
7 performed by member banks and agent banks alone and in
8 competition with each other.
9

10 21. Plaintiffs, and all others similarly situated, must
11 pay a deposit fee upon the deposit of VISA and MASTERCARD
12 charges and debits, whereas the deposit of checks, which entails
13 more processing, is without a fee to the depositor. Increases
14 by VISA and MASTERCARD of the interchange fees have resulted in
15 increases in deposit fees.
16

17 22. Plaintiffs, and all others similarly situated, have a
18 dilemma where each must individually choose to accept VISA and
19 MASTERCARD in order to attract business; however all are worse
20 off as a result due to the expense of the deposit fee.
21

22 23. VISA and MASTERCARD and Defendant banks and all other
23 member banks of VISA and MASTERCARD obtain unreasonable and
24 unwarranted profits by the assessment of deposit fees on the
25 deposits of Plaintiffs, and all others similarly situated.

26 24. Member banks were prohibited from issuing the Discover
27 Card, which charges merchants about 30% less than VISA and
28 MASTERCARD.

1 25. On August 28, 2002, VISA announced that it would not
2 permit new "Private Arrangements" by which member banks, but not
3 merchants, could opt out of the VISA interchange system.
4 Neither before nor after this event could Plaintiffs avoid the
5 fixed deposit fee.

6
7 26. All Plaintiffs and all others similarly situated have
8 been damaged by the payment of deposit fees, in as yet an
9 undetermined total amount, which total amount should be trebled.
10 Plaintiffs do not contest in this action, as averred in other
11 litigation, any tying arrangement, of the VISA and MASTERCARD
12 debit charges with other charges.

13 **SECOND CLAIM FOR RELIEF**

14 **15 U.S.C. §26, SECTION 16 OF THE CLAYTON ACT AGAINST**
15 **VISA, MASTERCARD, BANK OF AMERICA, WELLS FARGO AND US BANK**

16 27. Plaintiffs reaver all the preceding paragraphs as if
17 set forth in this claim.

18 28. This claim is brought under Section 16 of the Clayton
19 Act, 15 U.S.C. § 26.

20 29. Plaintiffs and all those similarly situated seek
21 against VISA, MASTERCARD, Defendant banks, member banks, and
22 their co-conspirators that this Court order:

23 (a) Defendants to cease and desist from setting the
24 interchange fee and consequent merchant deposit fee at
25 supracompetitive levels.

26
27 (b) The elimination from VISA and MASTERCARD of all joint
28 marketing activities.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully demand:

1. That the Court declare, adjudge and decree that Defendants have committed the violations of federal law alleged herein.
2. That the Court enter an order pursuant to Rule 23 of the Federal Rules of Civil Procedure permitting this action to be maintained as a class action on behalf of the class specified herein.
3. That the court award damages sustained by the Plaintiffs, and members of the class, on the First Claim for Relief, in an amount to be proved at trial, to be trebled according to law, plus interest, including prejudgment interest, reasonable attorney's fees and costs of suit, and such other and further relief as this Court may deem just and proper.
4. That the Court order:
 - (a) That Defendants cease and desist from setting the interchange fee, and the consequent merchant discount, at supracompetitive levels.
 - (b) The elimination from VISA and MASTERCARD of all joint marketing activities.
 - (c) That Plaintiffs be awarded their costs of suit including reasonable attorney's fees.

Plaintiffs hereby demand trial by jury of all issues properly triable thereby.

Dated: May 16, 2003

Attorneys of record for
Plaintiffs REYN'S PASTA BELLA,
LLC, JEFFREY LEDON DEWEESE,
M.D., BARRY LEONARD, dba
CRITTER FRITTERS, HAT-IN-THE-
RING, INC. dba EDDIE
RICKENBACKER'S, on Behalf of
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Similarly Situated

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